RESOLUTION NO. 2020-03


BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA:

ARTICLE I
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

SECTION 1.01 AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to Chapter 85-503, Laws of Florida, Special Acts of 1985, as amended and supplemented from time to time, Chapter 15 of the Charter of the City of New Smyrna Beach, Florida and other applicable provisions of law (collectively, the “Act”), and Resolution No. 2020-02, adopted by the Utilities Commission, City of New Smyrna Beach, Florida (the “Commission”), on March 23, 2020 (herein the “Master Resolution”).

SECTION 1.02 DEFINITIONS. Unless the context otherwise requires, capitalized terms used in this resolution shall have the meanings specified in this Section. Terms not otherwise defined in this Section shall have the meanings specified in the Master Resolution. Words importation singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.
“Award Certificate” means a certificate of the proper officer executed in connection with the execution of the Purchase Contract and evidencing compliance with the conditions set forth in Section 5.04 hereof.

“Bond Counsel” means nationally recognized counsel selected by the Commission and experienced in matters relating to the validity of, and the exclusion from gross income for federal income tax purposes of interest on, obligations of states and their political subdivisions.

“Bond Registrar and Paying Agent Agreement” means an agreement between the Commission and the Paying Agent and Registrar providing for the authentication of, and payment of the principal of, premium, if any, and interest on, the Series 2020 Bonds, in such form as shall be approved by the Chairman upon the recommendation of the General Manager and CEO with the advice of the Commission Attorney and Bond Counsel, such approval to be presumed by the Chairman’s execution thereof.

“Commission Attorney” shall mean the Commission Attorney, or her or his designee or the person succeeding to her or his principal functions.

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate the form of which is attached hereto as Exhibit C.

“Financial Advisor” means Southeastern Investment Securities, LLC, as financial advisor to the Commission.

“Master Resolution” means Resolution No. 2020-02, duly adopted by the Commission on March 23, 2020, as may be amended and supplemented from time to time.

“Original Resolution” shall mean Resolution No. 28-78, duly adopted by the Commission on June 30, 1978, as heretofore amended and supplemented from time to time.

“Paying Agent” and “Registrar” means The Bank of New York Mellon Trust Company, N.A. and its successors and assigns, who shall serve pursuant to the Bond Registrar and Paying Agent Agreement.

“Project Fund” means the fund created herein as set forth in Section 3.01 hereof.

“Purchase Contract” means the contract between the Commission and the Underwriter in substantially the form attached hereto as Exhibit B, setting forth the conditions upon which the Series 2020 Bonds will be sold by the Commission and purchased by the Underwriter and the details of the Series 2020 Bonds, upon the recommendation of the General Manager and CEO with the advice of the Commission Attorney and the Financial Advisor.


“Resolution” means, collectively, the Master Resolution, this Resolution, and all resolutions amendatory hereof or thereof or supplemental hereto or thereto, as applicable.
“Series 2020 Bonds” means the Commission’s Utility System Revenue Bonds, Series 2020, issued pursuant to this Resolution.

“Series 2020 Project” shall mean the Commission’s capital improvements to its utility system, as more fully described in Exhibit D hereto.

“Underwriter” means Hilltop Securities Inc., as the initial purchaser of the Series 2020 Bonds.

SECTION 1.03 FINDINGS. It is hereby ascertained, determined and declared that:

A. In order to take advantage of the current low long-term interest rates and to finance the costs of the Series 2020 Project and refinance the Refunded Bonds at a lower interest cost, the Commission finds it in the best interest of its ratepayers to provide for the issuance of the Series 2020 Bonds.

B. It is necessary and desirable and in the best interests of the ratepayers of the System that the Commission borrow the moneys, through the issuance of the Series 2020 Bonds, in an aggregate principal amount not to exceed $85,000,000. The Commission is authorized pursuant to the provisions of the Act to undertake the issuance of the Series 2020 Bonds.

C. Section 16.Q of the Original Resolution provides for the issuance of Additional Parity Obligations under the terms, limitations and conditions provided therein.

D. The Commission will comply with the terms, limitations and conditions contained in the Original Resolution upon the issuance of the Series 2020 Bonds, and will, therefore, be entitled to issue the Series 2020 Bonds as Additional Parity Obligations.

E. Upon the issuance of the Series 2020 Bonds and the refunding of the Refunded Bonds, the Series 2020 Bonds will be the only obligations secured by and payable from the Net Revenues.

F. The principal of, premium, if any, and interest on the Series 2020 Bonds will be payable solely from the Net Revenues. Neither the City, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the Series 2020 Bonds or to make any of the required sinking fund, reserve or other payments required by the Resolution, and the Series 2020 Bonds will not constitute a lien upon the System or upon any properties owned by the Commission or owned by or located within the boundaries of the City except the Net Revenues as provided herein. The Commission has no taxing powers.

G. The Net Revenues to be derived from the operation of the System are estimated to be sufficient to pay all principal of and interest on the Series 2020 Bonds to be issued hereunder, as the same become due, and to make all other payments required by the Resolution.

H. The Commission expects to receive investment grade ratings from Moody’s Investors Service and Fitch Ratings, prior to the date of issuance of the Series 2020 Bonds, provided, however, receipt of such rating is not a condition to issuance of the Series 2020 Bonds.
I. A negotiated sale of the Series 2020 Bonds is in the best interest of the Commission and is found to be necessary for the following reasons, as to which the following specific findings are hereby made: (1) it is necessary to utilize the marketing services of an underwriter in order to achieve the lowest interest rate on the Series 2020 Bonds; and (2) it is more likely that the Commission will secure the market timing necessary to accomplish the lowest and best interest rate by sale through negotiation.

J. It is in the best interests of the Commission to authorize the proper officers of the Board to execute a Purchase Contract for the sale of the Series 2020 Bonds on behalf of the Commission, subject to certain conditions, in order to enable the timely sale and award of the Series 2020 Bonds.

K. It is necessary and desirable in connection with the issuance and delivery of the Series 2020 Bonds to the Underwriter: (1) to authorize the execution and delivery to the Underwriter, upon payment therefor in accordance with the provisions of the Purchase Contract, of the Series 2020 Bonds in definitive form; (2) to authorize the execution and delivery on behalf of the Commission of the Bond Registrar and Paying Agent Agreement; (3) to authorize the execution and delivery of a tax compliance certificate, a tax return, a continuing disclosure undertaking, and such other closing agreements, documents, and certificates as are usual and customary in connection with the delivery of the Series 2020 Bonds, all upon the recommendation of the General Manager and CEO, with the advice of the Commission Attorney, the Financial Advisor and Bond Counsel; and (4) to authorize the taking of such further action by the Chairman, General Manager and CEO, Chief Financial Officer, and others employed by or acting on behalf of the Commission as is necessary to effect the issuance and delivery of the Series 2020 Bonds and the application of the proceeds thereof to the costs of issuance of the Series 2020 Bonds.

L. In connection with its continuing disclosure obligations under Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), the Commission desires to approve the form of, and authorize the execution and delivery of, the Continuing Disclosure Certificate, a form of which is attached hereto as Exhibit C (the “Continuing Disclosure Certificate”).

M. The Commission finds the Series 2020 Project to be necessary and important to complete in order to cause the System to carry on stable operations and maintain a reliable power supply by the Board to its customers.

SECTION 1.04 RESOLUTION AND MASTER RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Series 2020 Bonds authorized to be issued hereunder by those who shall be the Registered Owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Commission and such Registered Owners. The covenants and agreements in this Resolution and the Master Resolution, shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2020 Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Series 2020 Bonds over any other thereof, except as expressly provided therein and herein.

SECTION 1.05 AUTHORIZATION OF THE SERIES 2020 PROJECT; REFUNDING OF REFUNDED BONDS. There is hereby authorized the financing of the Series
2020 Project from the proceeds of the Series 2020 Bonds and the findings contained in Section 1.03 are determined to be true and correct findings by the Commission. Proceeds received from the sale of the Series 2020 Bonds are hereby authorized to be used to pay, or to reimburse the Commission for, the cost of the Series 2020 Project.

Additionally, the refunding of the Refunded Bonds is hereby authorized in the amount outstanding of the Refunded Bonds upon the date of the issuance of the Series 2020 Bonds, with such outstanding amounts thereunder paid to the holders thereof. The Chief Financial Officer, acting on behalf of the Commission, is authorized to provide notice of the prepayment to such holders of the Refunded Bonds.

ARTICLE II
AUTHORIZATION OF ISSUANCE OF SERIES 2020 BONDS; DESCRIPTION, DETAILS AND FORM OF SERIES 2020 BONDS

SECTION 2.01 DESCRIPTION OF SERIES 2020 BONDS. The Series 2020 Bonds shall be issued in a principal amount not to exceed $85,000,000, shall be dated, shall be numbered sequentially beginning with R-1, shall be in the denominations of $5,000 or integral multiples thereof, shall be subject to redemption prior to maturity in accordance with the Purchase Contract, shall bear interest at the rates, payable on such dates; shall mature on the first day of October in such years and in such amounts and have such other characteristics, consistent with the provisions of the Master Resolution and this Resolution and Section 6.04 hereof and as shall be specified in the Purchase Contract.

The Series 2020 Bonds shall be issued in fully registered form; shall be payable with respect to principal at the office of the Paying Agent; shall be payable in lawful money of the United States of America; and shall bear interest from their date, or from the most recent date to which interest has been paid, payable by check or draft mailed by the Paying Agent to the Registered Owner at his address as it appears upon the books of the Bond Registrar as of the close of business on the 15th day of the month preceding such interest payment date; provided that, for any Registered Owner of One Million Dollars ($1,000,000) or more in principal amount of the Series 2020 Bonds, such payment shall, at the written request of such Registered Owner, be made by wire transfer or other medium acceptable to the Paying Agent and to such Registered Owner.

SECTION 2.02 EXECUTION AND AUTHENTICATION OF SERIES 2020 BONDS. The Series 2020 Bonds shall be executed in the name of the Commission by the Chairman and attested by the Secretary and the corporate seal of the Commission or facsimile thereof shall be affixed thereto or reproduced thereon. The signatures of the Chairman and the Secretary may be manual or facsimile signatures imprinted or reproduced thereon.

There shall be a Certificate of Authentication of the Bond Registrar on the Series 2020 Bonds, and no Series 2020 Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under the provisions of this Resolution unless such certificate shall have been duly executed on such Series 2020 Bond. The authorized signature for the Bond Registrar shall be either manual or in facsimile. The authentication by the authenticating agent upon any Series 2020 Bond shall be conclusive evidence that the Series 2020 Bond so authenticated has been duly delivered hereunder and is entitled to the security and benefit hereof.
In case any one or more of the officers who shall have signed or sealed any of the Series 2020 Bonds shall cease to be such officer of the Commission before the Series 2020 Bonds so signed and sealed shall have been actually sold and delivered, such Series 2020 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2020 Bonds had not ceased to hold such office. Any Series 2020 Bond may be signed and sealed on behalf of the Commission by such person as at the actual time of the execution of such Series 2020 Bond shall hold the proper office in the Commission, although at the date of such Series 2020 Bonds such person may not have held such office or may not have been so authorized.

SECTION 2.03 NEGOTIABILITY AND REGISTRATION. The Series 2020 Bonds shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Florida, and each successive Registered Owner, in accepting any of said Series 2020 Bonds shall be conclusively deemed to have agreed that the Series 2020 Bonds shall be and have all of the qualities and incidents of such negotiable instruments.

There shall be a Bond Registrar, who may also be the Paying Agent for the Series 2020 Bonds, which shall be a bank or trust company located within or without the State of Florida having a combined capital, surplus, and undivided profit of at least $50,000,000. The Bond Registrar shall be responsible for maintaining the books for the registration of the transfer and exchange of the Series 2020 Bonds. The Commission and the Bond Registrar may treat the Registered Owner of any Series 2020 Bond as the absolute owner thereof for all purposes, whether or not such Series 2020 Bond shall be overdue, and shall not be bound by any notice to the contrary.

All Series 2020 Bonds presented for transfer, exchange, redemption or payment (if so required by the Commission or the Bond Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Commission or the Bond Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The Bond Registrar may charge the Registered Owner a sum sufficient to reimburse it for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the initial delivery of the Series 2020 Bonds. The Bond Registrar or the Commission may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2020 Bonds shall be delivered.

The Commission and the Bond Registrar shall not be required to issue, transfer or exchange any Series 2020 Bonds during a period beginning at the opening of business on the 15th day next preceding either any Interest Payment Date or any date of selection of Series 2020 Bonds or parts thereof to be redeemed and ending at the close of business on the Interest Payment Date or day on which the applicable notice of redemption is given.

New Series 2020 Bonds delivered upon any transfer or exchange shall be valid obligations of the Commission, evidencing the same debt as the Series 2020 Bonds surrendered, shall be
secured by this Resolution, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2020 Bonds surrendered.

Whenever any Series 2020 Bond shall be delivered to the Bond Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2020 Bond shall be cancelled and destroyed by the Bond Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Commission.

SECTION 2.04 FORM OF BONDS. The text of the Series 2020 Bonds shall be in substantially the form of Exhibit A of the Master Resolution, with such omissions, insertions, and variations as may be necessary and desirable, and as may be authorized or permitted by either the Master Resolution or this Resolution and approved by Commission Attorney and Bond Counsel.

SECTION 2.05 BOOK-ENTRY SYSTEM. The Series 2020 Bonds shall be issued in book-entry only form as authorized by Section 2.07 of the Master Resolution. The Series 2020 Bonds shall be registered to Cede & Co. and immobilized in the custody of DTC.

All payments for the principal of, interest and redemption premiums, if any, on the Series 2020 Bonds shall be paid by check, draft or wire transfer by the Paying Agent to Cede & Co., without prior presentation or surrender of any Series 2020 Bond (except for final payment thereof); and shall constitute payment thereof pursuant to, and for all purposes of, this Resolution.

If less than all the outstanding Series 2020 Bonds of a single maturity are to be called for redemption, the Commission and the Paying Agent shall have no responsibility for the selection of the book-entry interests in the Series 2020 Bonds to be paid pursuant to the call for redemption, or for notification of that redemption or of that payment, or for payment to the beneficial owners of affected book-entry interests; all of which shall be handled by and in accordance with arrangements of DTC and its participants and others working through those participants.

To the extent permitted by the provisions of the Letter of Representations referred to above, the Commission shall issue Series 2020 Bonds directly to beneficial owners of the Bonds other than DTC, or its nominee, in the event that:

A. DTC determines not to continue to act as securities depository for the Series 2020 Bonds; or

B. the Commission has advised DTC of its determination that DTC is incapable of discharging its duties; or

C. the Commission determines that it is in the best interest of the Commission not to continue the book-entry system or that the interests of the beneficial owners of the Series 2020 Bonds might be adversely affected if the book-entry system is continued.

Upon occurrence of the events described in (A) or (B) above, the Commission shall attempt to locate another qualified securities depository, and shall notify Registered Owners of the Series 2020 Bonds through DTC if successful. If the Commission fails to locate another qualified securities depository to replace DTC, the Commission shall cause the Bond Registrar to authenticate and deliver replacement Series 2020 Bonds in certificate form to the beneficial owners
of the Series 2020 Bonds. In the event the Commission makes the determination noted in (C) above (the Commission undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Commission to make any such determination), or if the Commission fails to locate another qualified securities depository to replace DTC upon occurrence of the events described in (A) or (B) above, the Commission shall mail a notice to DTC for distribution to the beneficial owners of the Series 2020 Bonds stating that DTC will no longer serve as securities depository, the procedures for obtaining such Series 2020 Bonds in certificated form, and the provisions which govern the Series 2020 Bonds including, but not limited to, provisions regarding authorized denominations, transfer and exchange, principal and interest payments, and other related matters.

SECTION 2.06  REDEMPTION OF SERIES 2020 BONDS. The terms of this Section 2.06 shall apply to redemption of Series 2020 Bonds and are as follows:

A. Selection of Bonds to be Redeemed. The Series 2020 Bonds shall be selected for redemption in accordance with Section 3.02 of the Master Resolution.

B. Notice of Redemption. Unless waived by any Registered Owner of Series 2020 Bonds to be redeemed, notice of any redemption of the Series 2020 Bonds shall be made pursuant to Section 3.03 of the Master Resolution.

C. Conditional Redemption. In the case of an optional redemption, any notice of redemption may state that (1) it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent no later than the redemption date or (2) the Commission retains the right to rescind such notice on or prior to the scheduled redemption date as described and permitted by Section 3.04 of the Master Resolution.

D. Redemption Parameters for Series 2020 Bonds. The Series 2020 Bonds shall be subject to mandatory redemption, if any, and to optional redemption, as further provided for and set forth in the Purchase Contract approved pursuant to Section 5.04 hereof.

ARTICLE III
APPLICATION OF SERIES 2020 BOND PROCEEDS; PROJECT FUND

SECTION 3.01  SALE PROCEEDS. The proceeds, including accrued interest and premium, if any, and excluding the discount upon the sale of the Series 2020 Bonds shall be applied by the Commission as follows:

A. The accrued interest, if any, on the Series 2020 Bonds shall be deposited into the Sinking Fund.

B. To the extent not paid or reimbursed therefor by the Underwriter of the Series 2020 Bonds, the Commission shall pay all Costs of Issuance.

C. The principal amount outstanding of the Refunded Bonds shall be paid to the holders thereof.
D. An amount equal to the Reserve Account Requirement for the Series 2020 Bonds shall be deposited to the Reserve Fund (unless such amount is funded by a surety bond or other financial instrument as permitted by the Resolution).

E. The Commission shall establish a “Project Fund” and shall deposit therein a sum equaling the balance of the Series 2020 Bond proceeds which shall be invested in Authorized Investments as set forth in subsection F below, in order to finance the Series 2020 Project, and applied to fund the cost of the Series 2020 Project only in the manner provided herein.

F. Funds in the Project Fund shall be used only for payment of the Costs of the Series 2020 Project. Moneys in the Project Fund, until applied in payment of any item of the Cost of the Series 2020 Project, shall be held in trust by the Commission and shall be subject to a lien and charge in favor of the Registered Owners of the Series 2020 Bonds and for the further security of such Registered Owners, and the Commission may invest in such funds in Authorized Investments as defined in the Master Resolution.

SECTION 3.02 APPROVAL OF PAYMENT OF COSTS OF ISSUANCE. The Costs of Issuance of the Series 2020 Bonds are authorized to be paid in accordance with the not to exceed amounts which have been presented to the Commission and finalized and placed on file with the General Manager and CEO.

ARTICLE IV APPLICATION OF PROVISIONS OF THE MASTER RESOLUTION

SECTION 4.01 APPLICATION OF PROVISIONS OF THE MASTER RESOLUTION. The Series 2020 Bonds shall for all purposes be considered to be Bonds issued under the authority of the Master Resolution and shall be entitled to all the protection and security provided therein for Bonds, and shall be in all respects entitled to the security, rights and privileges thereunder.

The Series 2020 Bonds shall not be or constitute general obligations or an indebtedness of the Commission or of the City as “bonds” within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of the Net Revenues as provided in the Resolution. No Registered Owner of any of the Series 2020 Bonds shall ever have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any form of any property of or in the City, for payment of the Series 2020 Bonds or for the making of any payments under the Resolution. The Series 2020 Bonds shall not constitute a lien upon the System or upon any other property of the Commission, but shall constitute a lien only upon the Net Revenues in the manner provided in the Resolution.

ARTICLE V SALE OF SERIES 2020 BONDS

SECTION 5.01 NO VALIDATION. The Commission elects not to institute validation proceedings in the Circuit Court for Volusia County, Florida pursuant to the provisions of Chapter 75, Florida Statutes, for validation of the Series 2020 Bonds.
SECTION 5.02 NEGOTIATED SALE OF BONDS. The Commission in compliance with Section 218.385(1)(a), Florida Statutes, as amended, hereby finds, determines and declares that, upon the advice of its Financial Advisor, as set forth in the preambles hereto, a negotiated sale to the Underwriter of the Series 2020 Bonds is necessary and desirable and in the best interests of the Commission.

SECTION 5.03 DISCLOSURE STATEMENT. The disclosure statement required by Section 218.385(6), Florida Statutes, must be delivered by the Underwriter to the Commission upon or prior to the award of the Series 2020 Bonds and executing the Purchase Contract.

SECTION 5.04 DELEGATION OF AUTHORITY TO DETERMINE DATE OF SALE AND DETAILS OF SERIES 2020 BONDS AND TO EXECUTE PURCHASE CONTRACT; CONDITIONS TO EXERCISE OF AUTHORITY; AWARD CERTIFICATE. The General Manager and CEO of the Commission is hereby, subject to the conditions hereinafter set forth, authorized and empowered to determine the date of sale, principal amount, maturity dates and amounts, interest rates, dated date, redemption provisions and other details of the Series 2020 Bonds, and to execute the Purchase Contract on behalf of the Commission and to deliver an executed copy thereof to the Underwriter. This delegation of authority is expressly made subject to the following conditions, the failure of any of which shall render the Purchase Contract voidable at the option of the Commission. The conditions to exercise the authority to execute the Purchase Contract are:

A. The Purchase Contract shall be executed on behalf of the Commission by the proper officer on or before May 31, 2020, and shall be in such form and with such provisions as shall be reasonable and customary for purchase contracts in the opinion of the Commission Attorney and Bond Counsel.

B. The aggregate principal amount of the Series 2020 Bonds to be sold shall (exclusive of any original issue discount on the sale of the Series 2020 Bonds) not exceed $85,000,000.

C. The Series 2020 Bonds shall mature not later than October 1, 2053 and the Series 2020 Bonds shall be subject to optional redemption at par no later than October 1, 2032. The true interest cost rate for the Series 2020 Bonds shall not exceed 4.00%.

D. The Underwriter shall have delivered to the Commission a good faith check in an amount of not less than one percent of the aggregate principal amount of the Series 2020 Bonds.

E. The Financial Advisor shall provide its recommendation to the Commission regarding the Commission’s acceptance and execution of the Purchase Contract prior to the execution of the Purchase Contract.

In conjunction with the execution of the Purchase Contract, the proper officer shall execute and file with the records of the Commission an Award Certificate demonstrating compliance with the foregoing conditions.

SECTION 5.05 APPROVAL OF OFFICIAL STATEMENT; FURTHER ACTION TO DELIVER SERIES 2020 BONDS AUTHORIZED. The execution and delivery to the Underwriter, upon payment therefor in accordance with the provisions of the Purchase Contract,
of the Series 2020 Bonds in definitive form is hereby approved. The execution and delivery on behalf of the Commission of (1) the Bond Registrar and Paying Agent Agreement, (2) a tax compliance certificate and tax return, (3) the Continuing Disclosure Certificate, and (4) such other closing agreements, documents, and certificates as are usual and customary in connection with the delivery of the Series 2020 Bonds, all upon the recommendation of the General Manager and CEO, with the advice of the Commission Attorney, Bond Counsel and the Financial Advisor are hereby approved. The taking of such further action by the Chairman, General Manager and CEO, Chief Financial Officer, the Commission Attorney, and others employed by or acting on behalf of the Commission, as is necessary to effect the sale, issuance and delivery of the Series 2020 Bonds is hereby authorized and approved.

SECTION 5.06 BOND REGISTRAR AND PAYING AGENT AND AGREEMENT THEREFOR. The Bank of New York Mellon Trust Company, N.A. is hereby designated Bond Registrar and Paying Agent for the Series 2020 Bonds. The Chairman and Secretary of the Commission are hereby authorized to execute the Paying Agent and Registrar Agreement between the Commission and the Bond Registrar and Paying Agent.

SECTION 5.07 PRELIMINARY OFFICIAL STATEMENT AND OFFICIAL STATEMENT. The Commission hereby approves the form of the Preliminary Official Statement attached hereto as Exhibit A (the “Preliminary Official Statement”) (except for permitted omissions), and the distribution and use of that Preliminary Official Statement by the Underwriter in connection with the offering for sale of the Series 2020 Bonds. The proper officers of the Commission and each of them are authorized and directed, on behalf of the Commission, in their official capacities, to finalize the Preliminary Official Statement upon the pricing of the Series 2020 Bonds by the Underwriter with the advice of the Financial Advisor, counsel to the Commission and Bond Counsel with such modifications, changes and supplements as those officers shall approve or authorize for purposes of preparing and determining, and to certify and otherwise represent, that the Preliminary Official Statement as so completed (the “Official Statement”) is “final” for purposes of SEC Rule 15c2-12(b)(3) and (4). Those officers and each of them are also authorized to sign and deliver on behalf of the Commission, in their official capacities, the final Official Statement and such certificates in connection with the truth and accuracy of the final Official Statement and any amendment thereto as may, in their judgment, be necessary or appropriate, to the Underwriter. The distribution and use of the final Official Statement by the Underwriter in connection with the original issuance of the Series 2020 Bonds is further approved.

SECTION 5.08 MUNICIPAL BOND INSURANCE PROVISIONS. The Commission is authorized to purchase a bond insurance policy and/or a debt service reserve surety bond (each, a “Credit Facility”) for any or all of the Series 2020 Bonds, so long as the premium paid therefor is less than the amount of interest estimated by the Commission’s financial advisor to be saved as a result of such purchase. The General Manager and CEO is authorized to execute, on behalf of the Commission, a commitment for any such Credit Facility and an agreement (the “Insurance Agreement”) between the Commission and the provider of such Credit Facility which shall set forth the terms upon which the policy is issued. To the extent so provided in the Insurance Agreement executed prior to or simultaneous with the issuance of the Series 2020 Bonds, the terms of the Insurance Agreement shall be deemed to be a part of this Resolution and the Master Resolution to the same extent as if set forth herein.
SECTION 5.09  SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this resolution should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited, or to be against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements, or provisions of, and in no way affect the validity of, all the other provisions of the Master Resolution or this resolution or of the Series 2020 Bonds.

SECTION 5.10  REPEALING CLAUSE. All resolutions of the Commission, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby superseded and repealed.

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SECTION 5.11 EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED at a meeting duly called and held this 23rd day of March, 2020.

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA

(SEAL)

__________________________
Chairman

ATTESTED:

____________________
Secretary

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____________________
Counsel to the Utilities Commission
EXHIBIT A TO SUPPLEMENTAL RESOLUTION
PRELIMINARY OFFICIAL STATEMENT
EXHIBIT B TO SUPPLEMENTAL RESOLUTION
FORM OF PURCHASE CONTRACT
EXHIBIT C TO SUPPLEMENTAL RESOLUTION
FORM OF CONTINUING DISCLOSURE CERTIFICATE
EXHIBIT D TO SUPPLEMENTAL RESOLUTION

PROJECT DESCRIPTION

In addition to the refunding of the Refunded Bonds, the Proceeds of the Series 2020 Bonds will be used to finance and refinance certain capital improvements to the System including but not limited to (i) the improvements set forth in the Consulting Engineer’s Report For The Utilities Commission City Of New Smyrna Beach prepared by Stantec Consulting Services Inc., (ii) the improvements set forth in the Commission’s Capital Improvement Plan, as currently approved and as hereafter approved from time to time.

The costs of the Project shall include:

(A) Costs incurred directly or indirectly for or in connection with a Project or a proposed or future Project or acquisition including, but not limited to, those for preliminary planning and studies, architectural, legal, financial, engineering and supervisory services, labor, services, materials, equipment, accounts receivable, acquisitions, land, rights-of-way, improvements and installation;

(B) Premiums attributable to all insurance required to be taken out and maintained during the period of construction with respect to a Project to be acquired or constructed, the premium on each surety bond, if any, required with respect to work on such facilities, and taxes, assessments and other charges hereof that may become payable during the period of construction with respect to such a Project;

(C) Costs incurred directly or indirectly in seeking to enforce any remedy against a contractor or subcontractor in respect of any default under a contract relating to a Project or costs incurred directly or indirectly in defending any claim by a contractor or subcontractor with respect to a Project;

(D) Financial, legal, accounting, appraisals, title evidence and printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of such Series of Bonds;

(E) Capitalized interest funded from Bond proceeds, if any, prior to completion and for a reasonable period of time thereafter;

(F) Any other incidental and necessary costs including without limitation any expenses, fees and charges relating to the acquisition, construction or installation of a Project, and the making of extraordinary repairs, renewals and replacements, decommissioning or retirement of any portion of the System, including the cost of temporary employees of the Commission retained to carry out duties in connection with the acquisition, construction or erection of a Project and costs related to transition of such Project into ownership by the Commission;

(G) Costs incurred directly or indirectly in placing any Project in operation in order that completion of such Project may occur;
(H) Costs of acquiring an existing utility system from a Person, including but not limited to the costs relating to any real estate transaction related thereto;

(I) Any other costs relating to the System authorized pursuant to a Supplemental Resolution of the Commission and permitted under the laws of the State subject to the prior written approval of Bond Counsel; and

(J) Reimbursements to the Commission for any of the above items hereinbefore paid by or on behalf of the Commission, to the extent permissible under relevant tax law.